

No. 2014-1636, -1637

United States Court of Appeals
for the
Federal Circuit

PROGRESSIVE CASUALTY INSURANCE,

Appellant,

v.

LIBERTY MUTUAL INSURANCE CO.,

Appellee.

Appeal from the United States Patent and Trademark Office, Patent Trial and Appeal Board in No. CBM2012-00003.

**APPELLANT PROGRESSIVE CASUALTY INSURANCE CO.'S
UNOPPOSED MOTION TO EXTEND TIME FOR FILING ITS
PRINCIPAL BRIEF**

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*Attorneys for Appellant Progressive Casualty
Insurance Co.*

August 29, 2014

I. GROUNDS, RELIEF SOUGHT, AND LEGAL ARGUMENT

Pursuant to Rule 26(b) of the Federal Rules of Appellate Procedure and Rule 26(b) of the Federal Circuit Rules, Appellant Progressive Casualty Insurance Co. (“Progressive”) respectfully moves for an extension of sixty (60) days, up to and including Friday, November 14, 2014, to file and serve Progressive’s principal brief. No previous extensions of time have been requested by Progressive in this appeal. Progressive’s principal brief presently is due on September 15, 2014.¹

Progressive has good cause for requesting this extension. Brinks Gilson & Lione (“BGL”) is representing Progressive in connection with the appeal of seven distinct Final Written Decisions issued by the United States Patent and Trademark Office Patent Trial and Appeal Board (“PTAB”) in Appeal Nos. 14-1466, -1538, -1549, -1586, -1636, -1637, -1639, and -1656 (“the Appeals”). Progressive’s principal briefs in five of the Appeals are all currently due in the three-week timeframe between September 15, 2014 and October 2, 2014. For five of the Appeals, including these appeals and companion appeal no. 14-1639, Progressive was represented by different counsel before the PTAB. Progressive’s extension is essential to allow Progressive to adequately prepare and coordinate principal briefs in the Appeals.

¹ On today’s date, Progressive is also filing a request for an extension of time of equal length in companion appeal no. 14-1639.

Progressive also seeks an extension in order to permit it sufficient time to adjust its briefing in light of the Court's reversal of the party designations (and consequently the order of the briefing) in the present appeals (Nos. 14-1636 and -1637). The Court issued its order reversing the designations and changing the order of the briefing in these two appeals on August 8, 2014 – approximately one month after all three appeals were docketed on July 16, 2014. (Dkt. 21.) The Court's August 8, 2014 order is now the subject of a motion for reconsideration for which briefing was completed only a few days ago on August 26, 2014. (Dkt. 22, 23, 25.)

For all these reasons, including the complexity of preparing and filing two principal briefs on the same day and the recent change in the order of the briefing in these appeals, Progressive seeks to extend the deadline for filing and serving its opening brief in these appeals and companion appeal no. 14-1639.

II. STATEMENT OF LIBERTY'S OPPOSITION

On August 27, 2014, Progressive's counsel contacted counsel for Liberty regarding this motion. On August 28, 2014, Liberty's counsel responded that Liberty will not oppose a 60-day extension for Progressive to file and serve principal briefs in appeal nos. 14-1636, -1637 and -1639.

III. CONCLUSION

For the foregoing reasons, Progressive respectfully requests that this Court

enter an order extending the time for Progressive to file its principal brief to Friday, November 14, 2014.

Respectfully submitted,

/s/ Laura A. Lydigsen
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August 29, 2014

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**UNITED STATES COURT OF APPEALS FOR
THE FEDERAL CIRCUIT**

No. 2014-1636, -1637

PROGRESSIVE CASUALTY INSURANCE V. LIBERTY MUTUAL INSURANCE CO.

CERTIFICATE OF INTEREST

Counsel for Appellant certifies the following:

1. The full name of every party or amicus represented by me is:

Progressive Casualty Insurance Co.

2. The name of the real party in interest (if the party named in the caption is not the real party in interest) represented by me is:

Not applicable.

3. All parent corporations and any publicly held companies that own 10 percent or more of the stock of the party or amicus curiae represented by me are:

The Progressive Corporation
Drive Insurance Holdings, Inc.

4. The names of all law firms and the partners or associates that appeared for the party or amicus now represented by this firm in the trial court or agency or are expected to appear in this court are:

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August 29, 2014

/s/ *Laura A. Lydigson*

Laura A. Lydigson

**DECLARATION OF LAURA A. LYDIGSEN IN SUPPORT OF
APPELLANT'S REQUEST FOR AN EXTENSION**

I, Laura A. Lydigsen, hereby declare as follows:

1. I am an attorney at the law firm of Brinks Gilson & Lione (“BGL”)

and a member of the bar of this Court. I represent Appellant Progressive Casualty Insurance Co. (“Progressive”) in this appeal.

2. Progressive’s opening brief is currently due on September 15, 2014.

3. Progressive has requested a sixty (60) day extension of time in which to file and serve its opening brief. With the requested extension, Progressive’s opening brief would be due November 14, 2014.

4. Progressive has not sought a previous extension of time in these appeals or in companion appeal no. 14-1639.

5. BGL is representing Progressive in connection with the appeals of seven distinct Final Written Decisions issued by the United States Patent and Trademark Office Patent Trial and Appeal Board (“PTAB”). Progressive’s principal briefs in five of the appeals are all currently due between September 15, 2014 and October 2, 2014.

6. BGL did not represent Progressive before the PTAB in five of the seven referenced appeals.

7. Progressive seeks to extend the deadline for filing and serving its opening brief due, in part, to the complexity of preparing and filing principal briefs on the same day in these appeals on the appeals' current timelines.

8. On August 28, 2014, in response to Progressive's request for consent to a sixty (60) day extension, counsel for Appellee Liberty Mutual Insurance Co. ("Liberty") indicated that Liberty will not oppose a 60-day extension of time to file and serve principal briefs in appeal nos. 14-1636, -1637 and -1639.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct, and that this declaration was signed on August 29, 2014.

By: /s/ *Laura A. Lydigsen*
Laura A. Lydigsen
Counsel for Appellant Progressive Casualty
Insurance Co.

CERTIFICATE OF SERVICE

I hereby certify that on August 29, 2014, I caused the foregoing document to be electronically filed with the Clerk of the United States Court of Appeals for the Federal Circuit and caused a copy to be served on counsel of record, this 29th day of August 2014.

By: ECF

/s/ *Laura A. Lydigsen*
Laura A. Lydigsen